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IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WASHINGTON

KAISER SAID ELMI,	) NO. 2:13-cv-1703
TESFARGHABAR BERHANE,	)
MOHAMED MUHIDDIN,	)
	) FIRST AMENDED
	) COMPLAINT FOR VIOLATIONS OF
	) CIVIL RIGHTS, RACE DISCRIMINATION
PLAINTIFFS,	) PURSUANT TO TITLE VII OF THE
	) CIVIL RIGHTS ACT OF 1964,
v.	) DISCRIMINATION BASED ON
	) NATIONAL ORIGINAL (TITLE VII)
SSA TERMINALS, LLC. , a WASH	)
CORPORATION, JOHN BELL, TOM	) VIOLATION OF RCW 49.60.030, .080, ET
HSUE, WILLIAM KENDALL, THE	) SEQ, BATTERY, ASSAULT,
BRANDON BRENT, CHAD RIVERS,	) INTENTIONAL INFLICTION OF
MICHAEL STILLMAN CABACCANG,	) EMOTIONAL DISTRESS, NEGLIGENCE
DOES 1-150,	)
	) <u>JURY TRIAL DEMANDED</u>
	)
	)
Defendants.	)
_____	)

1 **KAISER SAID ELMI, TEFARGHABAR BERHANE, and MOHAMED MUHIDDIN,**  
2 the PLAINTIFFS herein, by and through their attorney, allege as follows:

3 **I. JURISDICTION**

4 1. This court has jurisdiction over the subject matter of this action pursuant to  
5 Title 28, United States Code Sections 1331, 1332, 1343, and 1367, and venue is  
6 properly set in the Western District Federal Court pursuant to 28 U.S.C. 1391.

7 2. The claims upon which this suit is based occurred in this judicial district.

8 3. PLAINTIFFS are informed and believe, and on that basis allege, that each of  
9 the named DEFENDANTS reside in this judicial district.

10  
11 **II. PARTIES**

12 2.1 Plaintiff KAISER ELMI is a married man residing primarily in the State of  
13 Washington, in KING County within the Western District of Washington. Plaintiff is a  
14 short haul (drayage) truck driver at the Port of Seattle. He is of East African birth and  
15 descent.

16 2.2 Plaintiff TEFARGHABAR BERHANE is a married man residing primarily in  
17 the State of Washington, in SNOHOMISH County within the Western District of  
18 Washington. Plaintiff is a short haul (drayage) truck driver at the Port of Seattle. He is  
19 of East African birth and descent.

20 2.3 Plaintiff MOHAMED MUHIDDIN is a married man residing primarily in the  
21 State of Washington, in KING County within the Western District of Washington.

1 Plaintiff is a short haul (drayage) truck driver at the Port of Seattle. He is of East  
2 African birth and descent.

3 2.4 DEFENDANT SSA TERMINALS, LLC. is a completely owned and operated  
4 SUBSIDIARY OF SSA MARINE, INC., .a Washington Corporation, with its corporate  
5 offices in Seattle. WA. SSA operates ports and marine terminals around the world,  
6 and at the Port of Seattle, operates Terminals 25, 30, and 18 under contract with the  
7 Publicly Owned Port of Seattle.

8 2.5 DEFENDANT JOHN BELL is an employee of Defendant SSA Marine, as  
9 such, he was. At the time of the incidents herein the General Manager of Terminal 30  
10 for SSA Marine, and was directly involved in decisions described in the fact portion of  
11 this complaint, supervised the Defendant workers, and directly made the decisions  
12 described that resulted in the harm to Plaintiffs

13 2.6 Defendant TOM HSUE is and was at the time of these incidents, a  
14 Superintendent at the PORT OF SEATTLE for SSA terminals, LLC, at Terminals 30  
15 and 18 at all times described in this complaint was acting in behalf of SSA in that  
16 capacity, on orders from and based on his of his authority from SSA TERMINALS AND  
17 SSA MARINE and his supervisor BELL.

18 2.7 Defendant BRANDON BRENT is, And was at the time of the incident, a  
19 Superintendent at the PORT OF SEATTLE for SSA TERINALS, at Terminals 30 and  
20 18 and at all times described in this complaint was acting in behalf of SSA in that

1 capacity, on orders from and based on his of his authority from SSA TERMINALS AND  
2 SSA MARINE and his supervisor BELL.

3 2.8 DEFENDANT CHAD RIVERS is, and was at the time of the incident a  
4 Longshore Worker hired, employed, and supervised by SSA Terminals and its  
5 personnel to load and unload containers at Terminal 30. On at least two occasions he,  
6 at, at the direction of SSA, and to fulfill its aims and goals, used force and violence to  
7 attack Plaintiffs in order to prevent them from using the restroom facilities at Terminal  
8 30. He was been criminally charged in two such incidents, AND CONVICTED IN AT  
9 LEAST ONE CASE. To Plaintiffs knowledge and belief Defendant Rivers has never  
10 been disciplined, admonished, counseled, or otherwise directed to not engage in such  
11 conduct and continues to be employed by SSA at that facility.

12 2.9 Defendant MICHAEL STILLMAN CABACCANG is, and was at the time of  
13 the incident a Longshore Worker hired, employed, and supervised by SSA Terminals  
14 and its personnel to load and unload containers at Terminal 30. On at least one  
15 occasions he, at, at the direction of SSA, and to fulfill its aims and goals, used force  
16 and violence to attack Plaintiff KAISER ELMI without cause or justification, striking his  
17 truck twice with his much larger pick and pushing and striking ELMI in out of an act of  
18 racial assault at Terminal 30SSA responded by banning Elmi “for life” for getting out of  
19 his truck to find out what was hitting him and why To Plaintiffs knowledge and belief  
20 Defendant Cabaccang has never been disciplined, admonished, counseled, or

1 otherwise directed to not engage in such conduct and continues to be employed by  
2 SSA at that facility.

3 2.10 There are other persons, identities presently unknown to PLAINTIFFS  
4 who are, and were at all times mentioned herein, involved in the batteries committed  
5 against Plaintiffs , directed or encouraged the Port of Seattle Police to remove  
6 Plaintiffs, the victims, from the Port Facility, and/or and not arrest Defendants and  
7 encouraged individual employee Defendants to batter Plaintiff, created the policy of  
8 barring Plaintiffs from the rest rooms, or otherwise who acted in concert with the above  
9 named DEFENDANTS and/or participated in other ways in those activities and the  
10 resulting harm in the incidents in question that are part of the subject of this action and  
11 in doing the things hereinafter alleged, acted under the auspices of SSA to carry out its  
12 aims and/or goals and/or color of state law as agents of the Port of Seattle, by and  
13 through its Department of Police, and with that agency's full consent and approval,  
14 and/or deliberately adopted a policy of discriminatory conduct by failing to properly  
15 train, supervise, or discipliner the involved officers.

16 2.11 Now, and at all times discussed herein, SSA Terminals, and/or SSA  
17 Marine was directly involved and responsible for all training, supervision, and policies  
18 that came into play in this incident and are on notice, of similar and other abuses by its  
19 employees and/or contract workers without taking sufficient steps to resolve the  
20 situation.

1           2.12 DOES 1-26 are, and were at all times mentioned herein, other workers  
2 who assaulted, made threats and/or racial or ethnic slurs against Plaintiffs and violated  
3 PLAINTIFFS' rights as discussed.

4           2.13 DOES 27-150 are employees, managers, directors, and/or supervisors of  
5 SSA Terminals, LLC and/or SSA Marine, Inc. who devised, implemented, or  
6 encouraged, or directed enforcement of their illegal and discriminatory policies by  
7 illegal and quasilegal/tortious means.

8           2.14 This action is brought pursuant to the First, Fifth and Fourteenth  
9 Amendments to the United States Constitution, and Article 1, Section 5 and Article 1,  
10 Section 7 of the Washington State Constitution, Title VII of the Civil Rights Act of 1964,  
11 42 U.S.C. 1983, 1988, Revised Code of Washington 49.60.030, .080, et seq., and  
12 Washington State common law prohibiting assault, battery, intentional infliction of  
13 emotional distress, false imprisonment, reflecting the duty to business-invitees, and  
14 Washington common law negligence.

15           2.15 In August of 2012, PLAINTIFFS ELMI and BERHANE filed a claim  
16 against the Port of Seattle. The Port acknowledged the claim shortly thereafter. The  
17 Port neither accepted nor rejected the claim. On October 2, 2012 PLAINTIFF  
18 MUHIDDIN filed a claim with the Port of Seattle, to which the Port never responded.

1 **III. FACTS**

2 3. 1 Plaintiffs are all East African immigrants from Ethiopia, Eritrea, and  
3 Somalia who are or have been have been employed as short-haul truck drivers by  
4 various companies, some for as many as 35 years.

5 3.2 Their job is to take truck tractors and to pick-up and haul semi- truck trailers  
6 (chasses) and containers on them between terminals at the Port of Seattle and the rail  
7 yards of BNSF and Union Pacific nearby, and occasionally to warehouses.

8 3.3. Terminal 30, the terminal in question, and most of the other container  
9 shipping terminals at the Port of Seattle have no direct rail connection, and depend on  
10 short haul truckers to haul the containers between the ships and the rail yards.

11 Without this essential service, the Port and the companies that manage the terminals  
12 could not function and no cargo could come in or out of the Port. As such, while  
13 Plaintiff's contractual relationship is not with the terminal operators, the terminal  
14 operators coordinate and regulate their activities, and Plaintiffs are essential business  
15 invitees.

16 3.4. Until the 1970's this work was performed by ILWU members, until the  
17 International agreed that the work could be contracted out, in a collective bargaining  
18 agreement that applied and applies to all Ports on the West Coast.

19 3.5. Most of this work, being poorly paid, and semi-skilled is performed by  
20 immigrants, in this case virtually all East African Immigrants.

1           3.6 TERMINAL 30, owned by the public through the Port of Seattle and  
2   operated by SSA TERMINALS, LLC, is a major source of such work for Plaintiffs who  
3   are paid a low flat rate per load, out of which they must pay for the trucking company's  
4   insurance, gas, maintenance on their tractors, etc.

5           3.7 Unlike terminals operated by other companies, Terminal 30, and to a lesser  
6   extent Terminal 18, also owned by the public (Port of Seattle) and both operated by  
7   Defendant SSA MARINE, bars Plaintiffs and other East African Drivers from using the  
8   rest room facilities at the Terminal, going so far as to suspend drivers who attempt to  
9   use the rest rooms, barring them for varying and arbitrary periods of time from picking  
10   up or dropping off cargo at the Terminal, severely cutting into their already meager  
11   livelihood and ability to feed their families. This is a phenomenon that began during the  
12   events that led to this case.

13          3.8. SSA has enforced this ban banning he victims from the Terminal, by acting  
14   abusively towards the drivers and by encouraging and condoning its employees and  
15   ILWU contract workers using physical force and violence to prevent Plaintiffs and other  
16   East African drivers from using the rest room facilities ratifying this conduct by refusing  
17   to investigate or punish ILWU members committing the assaults and by  
18   punishing/banning the victims, thus creating a hostile and dangerous discriminatory  
19   situation.

20          3.9. In contrast to their bannings of the drivers who attempt to use the rest  
21   rooms, SSA has not punished any of its employees or contract workers who physically



1 assault drivers, even when the SSA employee or contract workers is arrested and  
2 charged with criminal assault.

3 3.10. In at least two of these incidents, SSA responded to the criminal assault  
4 by suspending the victim, in the case of Plaintiff Elmi, for “life”, directing the Port of  
5 Seattle Police to force them to leave.

6 3.11 The other of those was the incident involving PLAINTIFF MUHIDDIN,  
7 who was not allowed to drop off his container, forcing him to wander the port with it  
8 until he found a driver willing to take it and to receive the payment for delivering it.

9 3.12. In these incidents, the Port of Seattle police carried out the directives of  
10 SSA and acted specifically and solely as their agent and on their behalf.

11 3.13. On May 30, 2012, PLAINTIFF KASIER ELMI was parked in his truck  
12 waiting to pick up a container at TERMINAL 30 at the PORT OF SEATTLE, operated  
13 by DEFENDANT SSA MARINE Inc. under contract, at the exact location where he was  
14 directed to be, when DEFENDANT MICHAEL CABACCANG, operating an enormous  
15 crane called a “pick” deliberately struck ELMI’s chassis with his pick twice while  
16 screaming and swearing at Elmi. The force that Cabaccang used was so great that it  
17 caused Elm’s truck to rock and nearly tip over, deeply frightening him.

18 3.14. When ELMI got out of his truck to find out what was going on, Defendant  
19 CABACCANG, then pushed ELMI, bumped his chest into ELMI’s and began  
20 screaming, swearing at, and threatening ELMOIT screaming “You M\*\*\*\*\* F\*\*\*\*\*”, you  
21 don’t belong here!” and physically injuring ELMI.

1           3.15. At the direction of SSA, a security guard employed by SSA insisted to the  
2     responding officers from the PORT of SEATTLE POLICE DEPARTMENT, Defendants  
3     JACK MYERS AND JOSE SANTIAGO, that there was no reason for them to be there.

4           3.16. The reaction of ILWU foreman WILLIAM KENDALL, who did not have the  
5     power to do so, and SSA Terminal Superintendent TOM HSUE, who did, was to ratify  
6     the conduct of CABACCANG and immediately order the victim, ELMI to leave  
7     Terminal 30 and banning him “life” from Terminal 30, thus depriving him of a significant  
8     part of his livelihood for getting out of his truck to find out what had struck it and why.

9           3.17. OFFICERS MYERS and SANTIAGO immediately carried out SSA’s  
10    direction and ordered ELMI to leave the Terminal, which ELIMI, having no choice, did.

11          3.18. CABACCANG was never arrested or cited for assaulting ELMI, despite  
12    the presence of at least one corroborating eye witness.

13          3.19. On June 27, 2012 PLAINTIFF TESHFARGHABAR BERHANE attempted  
14    to use the men’s room at Terminal 30 while his truck was parked there, and all  
15    operations were shut down for the 15 minute mandated morning break period.

16          3.20. WHEN PLAINTIFF TESHFARGHABAR BERHANE entered the rest room,  
17    DEFENDANT CHAD RIVERS, WORKING FOR SSA, demanded BERHANE not use  
18    the restroom, and when BERHANE continued to do so, RIVERS, with the backing and  
19    support of SSA, forcibly grabbed BERHANE by the neck and collar and lifted and  
20    dragged BERHANE from the restroom and the building, throwing him to the ground  
21    causing BERHANE to injure his arm abrading and scraping his on the pavement so

1 that significant blood flow resulted, and causing BERHANE to suffer other injuries for  
2 which he has received medical treatment and was out of work for a week due to his  
3 injuries..

4 3.21. No SSA worker or supervisor intervened in any way to assist BERHANE  
5 or try to stop the incident, they just stood and watched.

6 3.22. The reaction of SSA Terminal 30 General Manager John Bell was to  
7 unilaterally decide to ban the truckers from using the indoor restrooms that they were  
8 previously allowed to use on breaks and during the lunch shutdown, consigning them  
9 to filthy, barely maintained porta-potties at the edge of the terminal with no running or  
10 hand sanitizer.

11 3.23. Neither Bell, nor his Superintendents Brent and Hsue, nor any other SSA  
12 Employee ever bothered to notify the drivers that they were no longer allowed to use  
13 the restrooms. The only form of notice was a discreet sign on the restroom door  
14 reading "employees only". The drivers, who were at the terminal as workers, had no idea  
15 that this meant they were excluded and continued to use the restrooms.

16 3.24. Rivers was charged with, and ultimately convicted of an assault on  
17 Berhane that caused him to have to go to the hospital and seek repeated medical  
18 treatment amounting to \$6,000 in bills.

19 3.25. NEITHER SSA NOR ANY OF ITS MANAGER, SUPERVISORS OR  
20 EMPLOYEES DISCIPLINED RIVERS IN ANY WAY; NOR DID THEY DECLINE TO

1 KEEP HIM ON THE JOB AS THEY COULD HAVE, IN FACT, BELL REWARDED HIM  
2 BY CLOSING THE RESTROOMS TO THE TRUCK DRIVERS.

3 3.26. The result was a second battery/assault by RIVERS for the same  
4 conduct.

5 3.27. On September 25, 2012, Plaintiff MOHAMED MUHIDDIN parked his  
6 truck at Terminal 30 during the lunch hour, with all activity at the Terminal shutdown  
7 for lunch and attempted to use the rest room.

8 3.28. DEFENDANT CHAD RIVERS then charged at MUHIDDIN, shoved him  
9 hard and continued to push MUHIUDDIN telling him, "This is a Longshoreman's  
10 lunchroom."

11 3.29. MUHIDDIN, was very frightened and physically injured by RIVERS who  
12 kept pushing MUHIDDIN.

13 3.30. As this was taking place, SSA's other Superintendent for Terminal 30,  
14 Brandon Brent, emerged from his office upstairs in the same building, immediately  
15 started screaming at MUHIDDIN to ":get out of here."

16 3.31. When Muhiddin tried to explain what had occurred, BRENT continued to  
17 scream at him, "I don't care! Get out of here!" and marched Muhiddin back to his  
18 truck.

19 3.32. Muhiddin, as a Muslim must wash himself before prayers and meals as a  
20 matter of religious law

1           3.33. Brent claimed this to be conducting a full investigation, something he  
2 admitted in deposition to have no training in, along with no training in racial sensitivity  
3 or recognizing racial harassment/attacks.

4           3.34. BRENT then demanded MUHIDDIN'S driver's license and banned him  
5 from the TERMINAL for seven days, which was later expanded to two weeks when  
6 Muhiddin tried to drop off the container he was hauling before leaving, as was his  
7 responsibility.

8           3.35. DEFENDANTS Bell and Brent, accompanied by an SSA security guard  
9 named AN KIM then yelled at and insulted Muhiddin and ordered Muhiddin to leave  
10 the terminal immediately.

11           3.36. Port of Seattle Police Officers KWAN and SANTIAGO, at Bell and  
12 Brent's insistence then forced MUHIDDIN to leave the terminal at BELL, BRENT, and  
13 KIM's direction without letting him drop off the container on his truck, which we was  
14 required to deliver to Terminal 30.

15           3.37. PLAINTIFF MUHIDDIN was forced to wander the Port of Seattle for an  
16 extended period of time seeking another driver to deliver the container. Because  
17 Muhiddin was afraid that his trucking company would fire him since T-30 accounted for  
18 a majority of their business and they would believe that he had broken the rules, he  
19 simply called in as unavailable for the two weeks claiming his truck had broken down  
20 and then took less profitable outside routes that kept him mostly away from the Port.

21           3.38. The resulting retaliatory ban severely interfered with his livelihood.

1           3.39. The involved officers did cite Rivers for a second time, resulting in a  
2 second criminal prosecution against him.

3           3.40. RIVERS has not been disciplined in any way and continues to work at  
4 Terminal 30.

5           3.41. SSA's solution, when threatened with a lawsuit was to set up bathrooms  
6 at another terminal a prohibitive distance away that prevented Plaintiffs and other East  
7 African drivers from having access to a restroom facility while picking up and dropping  
8 off containers at Terminal 30 that would have required them to get out of line, if they  
9 could (almost impossible) and miss at least one load, if not two, thus cutting their  
10 income in half.

11          3.42. SSA took no steps to inform the drivers that these restrooms were  
12 available and the drivers did not know about them.

13          3.43. Prior to the filing of this lawsuit, counsel for SSA sent pictures to Plaintiffs'  
14 counsel purporting to show open restrooms at T-25 with a "Trucker's washroom sign  
15 on the door and directional arrow signs from the porta-potties to the supposedly open  
16 restrooms.

17          3.44. When Plaintiffs' Counsel and Plaintiff Berhane did a site inspection, there  
18 are no directional arrows, the "trucker's washroom" sign was different, and the  
19 restrooms smelled musty from disuse and lack of cleaning.

20          3.45. Plaintiffs do not believe that the restrooms at T-25 are actually available.  
21

3.46. There have been no such incidents or conflicts between the Longshore Workers and the drivers at the two other Terminals where they work, T-5 and T-49, neither of which is managed by SSA, but by other contracting companies.

3.47. Plaintiffs and other East African drivers have been subject to frequent racial slurs at T-30 including the N word, monkeys, etc. to which SA has done nothing in response.

3.48 This disparate treatment as to restrooms has long been regarded as unacceptable, a harkening back to Jim Crow, and is so offensive, especially as directed against Black people as to be regarded as a badge or hallmark of slavery and thus violative of the 13<sup>th</sup> Amendment. It is not the main issue, but is symbolic and symptomatic of a larger problem of discriminatory and tortious conduct.

#### **IV. STATEMENT OF DAMAGES**

4.1 As a direct and proximate result of the intentional and/or negligent acts of DEFENDANTS, PLAINTIFFS sustained deprivation of their First, Fifth and Fourteenth Amendment Rights, deprivation of liberty, pain and suffering, injury, emotional distress and humiliation in an amount that will be established at trial.

4.2 As a further direct and proximate result of the intentional and/or negligent acts of DEFENDANTS, PLAINTIFFS had to retain legal counsel to protect and vindicate their rights in court at an amount to be established at trial and for which he is entitled to be reimbursed.

4.3 As a further direct and proximate result of the intentional and negligent acts of the DEFENDANTS, PLAINTIFFS were deprived of legitimate income for no justified reason and in retaliation for seeking basic human treatment, and are entitled to for loss of wages and earnings due to the retaliatory and discriminatory treatment.

4.4 As a further direct and proximate result of the intentional and negligent acts of the DEFENDANTS, PLAINTIFFS are entitled to compensation for costs associated with medical treatment and counseling.

4.5 PLAINTIFFS are entitled to compensation for the Constitutional and personal harms DEFENDANTS inflicted on them.

■

## V. CAUSES OF ACTION:

**COUNT ONE**  
**VIOLATION OF CIVIL RIGHTS**  
**(TITLE 42 U.S.C. SECTION 1983)**  
**(AS TO PLAINTIFFS ELMI, BERHANE, AND MUHIDDIN)**  
**(As To Defendants SSA, BELL, BRENT, and HSUE, and DOES 1-25)**

5.1. PLAINTIFFS re-allege and incorporate herein by reference the allegations set forth in Paragraphs 1 through 4.5 of this complaint.

5.2. In committing the acts complained of herein, DEFENDANTS acted under color of state law, in operating a public facility to deprive PLAINTIFFS as alleged herein, of certain constitutionally protected rights including, but not limited to:



- 1 (a) The right not to be deprived of property and earning ability without due  
2 process of law;
- 3 (b) The right to be free from invasion or interference with PLAINTIFF'S zone of  
4 privacy;
- 5 (c) The right to equal protection of the law;
- 6 (d) The right to be free from unreasonable search and seizure;
- 7 (e) The right to be free from racially discriminatory enforcement;
- 8 (f) The right to be free from racially motivated assault and harassment.

9 5.3 In violating PLAINTIFFS' rights as delineated above, and other rights  
10 according to proof, DEFENDANTS acted by provocative conduct, verbal threat and  
11 intimidation, humiliation, use of force, and/or by ratifying personally the above listed  
12 conducts, acting to punish and deprive Plaintiffs for incidents wherein they were the  
13 victims, and to punish them for asserting their basic right to equal protection, equal  
14 access to facilities, and basic human rights DEFENDANTS acted to violate  
15 PLAINTIFFS' rights under the First, Fourth, Fifth, and Fourteenth Amendments to the  
16 U.S. Constitution.

17 5.4 DOES 1-25 are the other SSA employees and or their contract workers  
18 involved directly in the incidents in question.

19 5.5 As a direct and proximate result of the violations of their Constitutional  
20 rights by DEFENDANTS, and each of them, PLAINTIFFS suffered general and special  
21 damages as alleged in this complaint.

1 WHEREFORE, PLAINTIFFS pray for relief as hereinafter set forth.

2  
3 **COUNT TWO**  
4 **Violation of Civil Rights**  
5 **(Title 42 U.S.C. Section 1983)**  
6 **(AS TO PLAINTIFFS ELM, BERHANE, AND MUHIDDIN)**  
7 **(As To DEFENDANTS SSA, BELL, BRENT, HSUE, and Does 26-50)**  
8

9 5.6 PLAINTIFF re-alleges and incorporates herein by reference the allegations  
10 set forth in Paragraphs 1 through 5.5 of this complaint.

11 5.7 At all times herein mentioned, DEFENDANTS Does 26-50, who were  
12 Supervisors of the named individual SSA SUPERVISORS AND EMPLOYEES and  
13 Does 1-25 acted in their official capacities as MANAGERS, CORPORATE OFFICERS  
14 AND/OR SUPERVISORS of SSA over DEFENDANTS BELL, BRENT, AND HSUE and  
15 DOES 1-25 and failed to properly supervise, train, and discipline DEFENDANT(S),  
16 especially in light of known previous incidents involving contract Longshore Workers at  
17 the two SSA operated terminals at the Port of Seattle, and Plaintiffs, with SSA  
18 supervisors/managers playing a key role in that abuse, and in fact, ratified and  
19 approved their inappropriate, illegal, and tortious conduct and intentional acts to  
20 deprive PLAINTIFF of their rights secured by the Constitution of the United States,  
21 including, but not limited to their rights under the First, Fourth, 5<sup>th</sup> and 14<sup>th</sup>  
22 Amendments to the U.S. Constitution, and did so in conjunction and conspiracy with  
23 SSA Terminals and its parent company.

5.8 In committing the acts complained of herein and in their official and individual capacities, DEFENDANTS 26-100 acted with a design and intention to deprive PLAINTIFFS of their rights secured by the Constitution of the United States and acted with deliberate indifference to PLAINTIFFS' rights.

5.9 As a direct and proximate result of the acts complained of herein, PLAINTIFFS have suffered general and special damages as set forth in this complaint.

WHEREFORE, PLAINTIFFS pray for relief as hereinafter set forth.

**COUNT THREE**  
**Violation of Civil Rights**  
**(Title 42 U.S.C. Section 1983)**  
**(As to Plaintiffs ELMI and MUHIDDIN)**  
**(As To DEFENDANTS SSA TERMINALS, BELL, HSUE, KENDALL, BRENT, and**  
**Does 101-250)**

5.10 PLAINTIFFS re-allege and incorporate herein by reference the allegations set forth in Paragraphs 1 through 5.12 of this complaint.

5.11 DEFENDANTS BELL, HSUE, KENDALL, BRENT and DOES 101-250, acting expressly and with the knowledge and approval of their employer SSA TERMINALS acted in concert, conspiracy, and by usual and accustomed plan TO DIRECT the Port of Seattle Police to force ELMI and MUHIDDIN to leave TERMINAL 30 and to be banned from Terminal 30 under penalty of arrest, thus deliberately depriving them of their livelihood to retaliate against them seeking to obtain basic human rights and equal treatment and in support of the tortious conduct of SSA

1 Marine's employees/contractors attacks on ELMI and MUHIDDIN, and in support of  
2 SSA's racist and discriminatory policy as to the restrooms.

3 5.12 In violating PLAINTIFFS' rights as delineated above, and other rights  
4 according to proof, DEFENDANTS acted by provocative conduct, verbal threat and  
5 intimidation, humiliation, use of force, and by ratifying personally the above listed  
6 conducts, acting to punish and deprive Plaintiffs for incidents wherein they were the  
7 victims, and to punish them for asserting their basic right to equal protection, equal  
8 access to facilities, and basic human rights DEFENDANTS acted to violate  
9 PLAINTIFFS' rights under the First, Fourth, Fifth, Thirteenth, and Fourteenth  
10 Amendments to the U.S. Constitution.

11 5.13 As a direct and proximate result of the violations of their Constitutional  
12 rights by Defendants, and each of them, PLAINTIFFS have suffered general and  
13 special damages as alleged in this complaint.

14 WHEREFORE, PLAINTIFFS pray for relief as hereinafter set forth.  
15  
16

17 **COUNT FOUR**  
18 **RACIAL/ NATIONAL ORIGIN DISCRIMINATION in Violation of Title VII**  
19 **(As to all PLAINTIFFS)**  
20 **(As to all SSA DEFENDANTS)**

21 5.14 PLAINTIFFS re-allege and incorporate herein by reference the  
22 allegations set forth in Paragraphs 1 through 5.13 of this complaint.

1           5.15 In establishing and implementing the racially discriminatory policy toward  
2 use of the restrooms at Terminal 30, and in encouraging, supporting, and ratifying the  
3 use of force by its employees/contractors to enforce that policy, by use of banning  
4 orders from the Terminal for Plaintiffs and other members of the SPTA who sought to  
5 use of the restrooms at Terminal 30, and by using the Port of Seattle Police to enforce  
6 that discriminatory policy, Defendants SSA, BELL, HSUE, KENDALL < BRENNON,  
7 and Does 101-250 acted intentionally to violate Plaintiffs rights to equal treatment and  
8 success at the workplace as codified in Title VII.

9           5.16 This policy and its enforcement and the ratification of force and banning  
10 to defend and enforce it caused considerable pain, emotional distress, economic loss,  
11 and other harm to PLAINTIFFS in an amount to be proved in trial.

12           5.17 All of this conduct, policy, and ratification created an intensely hostile  
13 workplace.

14           5.18 The conduct of DEFENDANTS was willful, malicious, oppressive and/or  
15 reckless, and was of such a nature that punitive damages should be imposed in an  
16 amount commensurate with the wrongful acts herein alleged.

17           WHEREFORE, PLAINTIFFs pray for relief as hereinafter set forth.  
18

1 **COUNT FIVE**  
2 **BATTERY AND ASSAULT**  
3 **(As to DEFENDANTS SSA TERMINALS, BRENT, BELL, HSUE, CABACCANG**  
4 **AND RIVERS,)**  
5

6 5.19 PLAINTIFF realleges and incorporates herein by reference the  
7 allegations set forth in Paragraphs 1 through 5.18 of this complaint.

8 5.20 By deliberately physically attacking Plaintiffs as described, Defendants  
9 CABACCANG and RIVERS, acted to intentionally commit batteries against the  
10 Plaintiffs.

11 5.21 Defendants BRENT, BELL, and HSUE, as direct supervisors/managers  
12 and agents of SSA acted deliberately to use force and the immediate threat of force,  
13 as well as verbal abuse to force Plaintiffs ELMI and MUHIDDIN from Terminal 30, and  
14 Plaintiffs were personally physically afraid of those Defendants.

15 5.22 These abusive physical attacks, accompanied by verbal threats, insults,  
16 and slurs caused Plaintiffs to reasonably fear more harmful and offensive touching by  
17 Defendants, and they did so fear.

18 5.23 The batteries and assaults of PLAINTIFFS, committed by DEFENDANTS  
19 CABACCANG AND RIVERS were directly and proximately caused by DEFENDANTS  
20 SSA TERMINALS, BELL, HSUE, KENDALL, BRENT and Does 101-250 ratifying the  
21 batteries by the direct acts and policies, failing to supervise and discipline the batterers  
22 despite full knowledge and awareness, verbal support for the batteries, deliberate  
23 failure to speak out against the batteries, , and using the violence to justify retaliation

1 against the Plaintiffs/victims, all of which created a climate of acceptance and  
2 encouragement of that violence, thus creating more violence.

3 5.24 As a direct and proximate result of the violation of their rights by  
4 DEFENDANTS, and of DEFENDANTS' tortious conduct towards PLAINTIFFS,  
5 PLAINTIFFS suffered general and special damages as alleged in this complaint.

6 5.25 The conduct of DEFENDANTS was willful, malicious, oppressive, and/or  
7 reckless, and was of such a nature that punitive damages should be imposed in an  
8 amount commensurate with the wrongful acts alleged herein.

9 WHEREFORE, PLAINTIFFS pray for relief as hereinafter set forth.

10  
11  
12 **COUNT SIX**  
13 **RACIAL/NATIONAL ORIGIN DISCRIMINATION UNDER RCW 49.60.030**  
14 **(As to All DEFENDANTS)**  
15

16 5.26 PLAINTIFF realleges and incorporates herein by reference the  
17 allegations set forth in Paragraphs 1 through 5.25 of this complaint.

18 5.27 In acting to devise, adopt, ratify, and or enforce an arbitrary and  
19 unreasonable [policy as to the restrooms at Terminal 30 that was facially and legally  
20 discriminatory based on the racial identity/national origin of the Plaintiffs and other  
21 victims Defendants knowingly and deliberately acted to discriminate against Plaintiffs  
22 and others based on their race and/or National; Origin

5.28 As a direct and proximate result of the violation of their rights by DEFENDANTS, and of DEFENDANTS' tortious conduct towards PLAINTIFFS, PLAINTIFFS suffered general and special damages as alleged in this complaint.

5.29 The conduct of DEFENDANTS was willful, malicious, oppressive, and/or reckless, and was of such a nature that punitive damages should be imposed in an amount commensurate with the wrongful acts alleged herein.

WHEREFORE, PLAINTIFFS pray for relief as hereinafter set forth.

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**COUNT SEVEN**  
**INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS**  
**(As to All DEFENDANTS)**

5.30 PLAINTIFF realleges and incorporates herein by reference the allegations set forth in Paragraphs 1 through 5.29 of this complaint.

5.31 In carrying out the pattern of discrimination, violence, intimidating, and economic deprivation and other acts alleged throughout this complaint, DEFENDANTS, and each of them sought to cause emotional distress and trauma to PLAINTIFFS, and PLAINTIFFS did suffer such emotional distress with accompanying physical symptoms.

5.32 As a direct and proximate result of the violation of their Constitutional rights by DEFENDANTS, Batteries, and other tortious conduct, PLAINTIFFS suffered general and special damages as alleged in this complaint.





1 specifically on notice was imminent, directly and proximately resulting in the injuries  
2 and damages to the PLAINTIFFS as alleged herein.

3 WHEREFORE, PLAINTIFFS prays for relief as hereinafter set forth.

4  
5 **VI. JURY TRIAL DEMAND**

6 6.0 PLAINTIFFS hereby demand a jury trial in this matter.

7  
8 **VII. PRAYER FOR RELIEF**

9 WHEREFORE, PLAINTIFFS prays for judgment against the DEFENDANTS as  
10 follows:

11 1. For general damages including pain and suffering and, together with special  
12 damages for PLAINTIFFS' Economic losses, reasonable and necessary legal  
13 expenses, and medical expenses, the exact amount of which will be established at the  
14 time of trial;

15 2. For punitive damages in an amount to be proven at trial pursuant to Federal  
16 and State law;

17 3. For actual attorney's fees and litigation costs pursuant to 42 U.S.C. 1988  
18 and Title VII;

19 4. For statutory attorney's fees and costs;

20 5. For court-supervised training, regulations and policy changes; and

21 6. For such other and further relief as the Court deems just and proper.

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DATED: March 25, 2015

/S/LAWRENCE A. HILDES  
LAWRENCE A. HILDES, WSBA #35035  
P.O. Box 5405, Bellingham, WA 98227  
Tel: (360) 715-9788, lhildes@earthlink.net  
Attorney for PLAINTIFFS KAISER ELMI,  
TESFARGHABAR BERHANE and MOHAMED  
MUHIDDIN

**PROOF OF SERVICE**

Lawrence A. Hildes certifies as follows:

I am over the age of 18 years, and not a party to this action. I am a citizen of the United States.

My business address is P.O. Box 5405, Bellingham, WA 98227

On March 25, 2015, I served the following documents(s) described as follows

**PLAINTIFFS' FIRST AMENDED COMPLAINT**

on the following persons(s) in this action at the following addresses:

**Richard P. Lentini**

RYAN SWANSON & CLEVELAND

1201 3RD AVE, STE 3400, SEATTLE, WA 98101-3034

206-464-4224, Fax: FAX 583-0359

Email: [lentini@ryanlaw.com](mailto:lentini@ryanlaw.com)

ATTORNEY FOR SSA DEFENDANTS

CHAD RIVERS

20218 87TH Avenue E

Spanaway WA 98387

Michael Stillman CABACCANG

16517 16th Avenue SW

Burien WA 98166

[ X ] (BY PERSONAL SERVICEL) to named NON-SSA DEFENDANTS by HAVING DELIVERED a true copy of the above documents in a sealed envelope addressed to the person(s) above, DELIEVRED TO THEM OR AN ADULT MEMBER OF THEIR HOUSEHOLD at the above address

[X ] By electronic notice, by filing the PLEADING electronically and therefore cuasimng it to be served on

[X] (FEDERAL) I declare under penalty of perjury that I am a member of the BAR of this court, and that the above information is true and correct.

Executed on March 25, 2015, at Bellingham, Washington.

/S/ Lawrence A. Hildes

Lawrence A. Hildes

**ELM, et al v. SSA MARINE, INC., et al.**-FIRST AMENDED COMPLAINT

28

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ATTORNEY FOR PLAINTIFFS